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IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

No. 674

WATERMAN STEAMSHIP CORPORATION,
Petitioner,

vs.

JAMES DEAN, GEORGE CICIC, ALFRED J. WAYNE, ET AL.,
Respondents.

ANSWER AND BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

I. DUKE AVNET,
Attorney for Respondents.

JOHN P. McKINLEY,
Of Counsel.

The Daily Record Co., Baltimore 3, Md.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

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ANSWER TO PETITION FOR WRIT OF CERTIORARI

The respondents, James Dean, George Cicic, Alfred J. Wayne, Garfield Ruben, Leonard Bodden, Clarence W. Hawkins, E. J. Robertson, Richard Z. McKendree, Marion B. Nicholas, Henry V. Walesky, Leonard T. Prins, Robert C. Harrell, Robert R. Lewis, Orvell C. Waldren, Samuel L. Jacobs, Martyn C. Oille, Roberto Espada, Earl N. Forbes, Richard Powell, Shevi Koncagul, Martin A. Abdon, Simeon Masangya, Johns Graffoguini, Sullivan V. Cousins, Harold H. Evans, Irving J. Melton, Hans M. Andersen, Emmett H. Callahan, Robert L. Decker, Frank R. Young and Guy T. Horner oppose the petition of Waterman Steamship Corporation for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

STATEMENT OF THE MATTER INVOLVED

This case involves the amount to be allowed four officers and twenty-seven unlicensed members of the crew of S.S. FURNIFOLD M. SIMMONS for their successful salvage services to the S.S. FAIRISLE which was rescued after it had gone aground in the Bay of Bengal off the east coast of India on August 28, 1946 (R. 47-51). The FAIRISLE was a steel cargo steamer with a crew of 44 men and her fair salvage value was $943,875 (R. 19). The SIMMONS was a Liberty vessel valued at $544,506 (R. 19). The SIMMONS sped to the rescue from Calcutta, India, a distance of about 300 miles and devoted from August 28, 1946 to September 5, 1946 to the rescue of the FAIRISLE (R. 53, 63, 66-84). These were dangerous waters due to the prevalence of tropical cyclonic storms and because of rocks jutting up out of the water about ½ to 1 mile away (R. 60, 62, 64, 65, 66, 69, 70, 71, 81, 85-91). The lines which were made fast between the vessels parted numerous times (R. 55, 72-79); crew members of the SIMMONS were beached when their life-boat, which was being used to run lines between the vessels, became swamped with water due to the heavy surf (R. 56, 58, 62, 63, 75-77, 81-83, 91-94); and other vessels which sought to help the FAIRISLE left despairing of success (R. 63, 72-74). Even the FAIRISLE wired the SIMMONS that the latter's efforts could not be successful (R. 59, 63, 64, 92, 93). Nevertheless, the SIMMONS' crew successfully rescued the FAIRISLE.

After a full trial on the merits, the U. S. District Court for the District of Maryland awarded the respondents $45,100 and apportioned this award among the respondents in accordance with the risks assumed by each (R. 3, 4). The United States Court of Appeals for the Fourth Circuit affirmed this award.

The District Court did mention that one of its items of consideration in determining the award was the depreciated value of the dollar (R. 12) and it is this point which the petitioner now raises as the basis for its application for a writ of certiorari.

THE QUESTION PRESENTED

Did the District Court err in considering the depreciated value of the dollar when it made its award for salvage to the crew members of the rescuing vessel?

REASONS FOR OPPOSING THE GRANTING OF THE WRIT

This question above which is raised by petitioner presents no special or important reason why this Honorable Court should grant review by writ of certiorari. There is no basic departure from nor is there any innovation introduced into the established principles by which salvage awards are determined. The amount of the award is in the sound discretion of the court and although there are general principles to guide the court there are no inflexible or unchanging rules or doctrines which control the court in fixing the amount of the award. The basic concept of salvage is to reward the salvors and to encourage them and others in the future to incur risks in saving life and property on the high seas. The question presented by petitioner does not pose any act of the District Court in conflict with this well settled doctrine.

Respectfully submitted,

I. DUKE AVNET,
Attorney for Respondents.

JOHN P. MCKINLEY,
Of Counsel.

Baltimore, Maryland,
April 13, 1949.

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BRIEF OPPOSING THE GRANTING OF THE WRIT OF CERTIORARI

ARGUMENT

The principle of salvage is well expressed in *Hughes on Admiralty*, Sec. 62, as follows:

> "A salvor who rescues valuable ships or cargoes from the remorseless grasp of wind and wave, the cruel embrace of rocky ledges or the devouring flames, need prove no bargain with its owner as the basis of recovering a reward. He is paid by the courts from motives of public policy; paid not merely for the value of his time and labor in the special case, but a bounty in addition, so that he may be encouraged to do the like again."

There is no yardstick or micrometer which can be used to accurately measure the value of a salvage service. Each

salvage case has its own peculiar circumstances and the amount of the award is largely a matter of judicial discretion. See e.g. *The Sybil*, 4 Wheat. 98, 4 L. Ed. 522. There are certain factors which the court may consider in helping it to arrive at its award but these are purely guides and are not considered as mandates. See e.g. *Steamer Avalon Co. v. Hubbard S.S. Co.*, 255 F. 894; *The Sandringham*, 10 F. 556, 5 Hughes 316; *The Blackwall*, 10 Wall. 1, 12, 19 L. Ed. 870; *Hughes on Admiralty*, Sec. 65.

The Court may in the exercise of its discretion, when fixing the amount of an award, consider the depreciated value of the dollar in order to make the bounty a fair one. In the case of the *Kia Ora*, 252 F. 507, 511 (1918), decided by the U. S. Court of Appeals for the Fourth Circuit, there appears this language:

> "It is to be considered also that the award of $100,000 was of hardly more value or greater encouragement for such service than an award of $50,000 would have been 10 years ago. * * * Looking at the case in the light of the award in the case of the St. Paul, comparing the awards made in various other cases, American and British, and considering the great value and great peril of the ship and cargo, the preparation for the work, the skill and dispatch of the service, the importance of time to the Kia Ora, the perishable nature of a large part of her cargo, *and the decreased value of money*,* and giving due weight to the strong opinion of the learned and experienced District Judge, the majority of this court cannot escape the clear and strong conviction that the award should be increased to $150,000."

The same appellate court below in the present case reaffirmed this doctrine. At page 103 of the Record, Judge Soper speaking for that court, said:

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* Emphasis supplied.

"The owners of the FAIRISLE contend that it was error to give weight to the depreciated value of the dollar in fixing the amount of the award. They argue that the amount of a salvage award is essentially a fraction of the value of the ship saved, and since changes in the price level affect numerator and denominator alike, the awards in the older cases truly reflect the proper percentage to award in the case at bar. This court, however, has already decided the point. It was noted in the *Kia Ora*, 4 Cir., 252 F. 507, 509, (fol. 107-108), that whatever may have been the rule in the past, the salvage award is no longer computed on a percentage basis; and the court stressed the rise in the general price level as one of its reasons for increasing the award of the District Court. The *Kia Ora, supra*, at 511."

The petitioner makes the same argument before this Honorable Court which Judge Soper rejected in the above passage. Aside from the fact that the award was not computed on a percentage basis of the value of the FAIRISLE—thus undermining the very premise of petitioner's argument namely that the respondents received the benefit of the inflated value of the FAIRISLE by the use of the percentage computation method in arriving at the award—there are other reasons why petitioner's argument is faulty. Contrary to petitioner's statement it is not at all clear that there is any such theory that a salvage award is in the nature of an award of a part interest in the salved ship. A reading of the quotation from the case of *Oelwerke Tentoria v. Erlanger & Galinger*, 248 U. S. 521, appearing on page 6 of petitioner's brief discloses this. A salvage award makes of the salving seamen creditors simply who are entitled to a lien against the salved ship to enforce their award. This is entirely different from the theory that they become part owners of the ship. If there were such a

theory, there still is no evidence in the record of any kind that the fair value of the FAIRISLE, which was stipulated to by the parties (R. 19), represented inflated value. Hence, from any view of petitioner's novel theory, there is no basis whatsoever, either on the facts or on the law, that the respondents benefited from the depreciated value of the dollar twice.

The petitioner has a dubious collateral argument to the above theory namely that the salvors received in their award the benefit of the court's consideration of the depreciated value of the dollar as of the time that the award was made instead of as of the time of the salvage. The implication is that the petitioner was prejudiced thereby although there is no statement to that effect. There is no evidence in the record of any kind that there was any difference in the amount of depreciation of the dollar between the time of the salvage and the date of the award. Even if there were a difference, this would be of no avail to the petitioner since the lower court did not use the percentage method in arriving at its award and hence the point of time at which the court considered the depreciation of the dollar should apply is immaterial so long as its award was reasonable and fair under all of the circumstances.

CONCLUSION

It is submitted that the lone question presented by the petitioner pertaining to the lower court's consideration of the depreciated value of the dollar in making its award, does not pose any special or important reason for the granting of a writ of certiorari by this Honorable Court; nor was there any ruling made in conflict with the settled law to warrant review by the United States Supreme Court.

Respectfully submitted,

I. DUKE AVNET,
Attorney for Respondents.

JOHN P. MCKINLEY,
Of Counsel.

Baltimore, Maryland,
April 13, 1949.